

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**KIMBERLEE VEN HOUSEN and
STATE FARM AUTO INSURANCE COMPANY
OF BLOOMINGTON, ILLINOIS,**

Plaintiffs,

v.

Case No. 20-CV-1097

**WINNEBAGO INDUSTRIES, INC.
MERCEDES-BENZ USA, LLC, and
RV WORLD INC OF NOKOMIS d/b/a
GERZENYS RV WORLD,**

Defendants.

**DECISION AND ORDER ON DEFENDANT’S MOTION FOR PARTIAL
DISMISSAL AND ON PLAINTIFF’S MOTION TO FILE AMENDED COMPLAINT**

Kimberlee Ven Housen sues Winnebago Industries, Inc., RV World, Inc. of Nokomis d/b/a Gerzeny’s RV World, and Mercedes-Benz USA, LLC for damages stemming from an allegedly defective Winnebago RV she purchased on June 14, 2017. (Compl., Docket # 1-1.) In Count III of her complaint, Ven Housen alleges that Winnebago breached its implied warranty of merchantability and in Count VIII of her complaint, Ven Housen alleges that Winnebago also breached a specific warranty issued to her at the time of purchase. (*Id.* ¶¶ 29–33, 61–65.) Ven Housen references in her complaint and attaches as Exhibit B the alleged warranty Winnebago breached. (*Id.* ¶ 62, Ex. B.) The attached warranty states that a claim for breach of the warranty must be initiated within 15 months from the date of purchase. (Compl., Ex. B, Docket #1-1 at 35.)

Winnebago subsequently moved to dismiss both Count III and Count VIII of Ven Housen's complaint as time-barred because 15 months from the June 14, 2017 date of purchase is September 14, 2018. (Def.'s Br., Docket # 16.) Ven Housen, however, did not file suit until June 12, 2020. (Docket # 1-1.)

Ven Housen responded to Winnebago's motion for partial dismissal, arguing that she inadvertently attached to her initial complaint as Exhibit B a "2018 New Vehicle Limited Warranty" which does not apply to the 2017 vehicle that is the subject of this litigation. (Pl.'s Mot. to Am. ¶ 3, Docket # 26.) Ven Housen states that in lieu of responding to Winnebago's motion to dismiss, she seeks leave to file an amended complaint amending the factual background and claims against Winnebago. (*Id.* ¶ 4.) Ven Housen represents that Winnebago does not object to the filing of the amended complaint. (*Id.* ¶ 7.)

Thus, I will grant Ven Housen leave to file an amended complaint and find Winnebago's motion for partial dismissal moot.

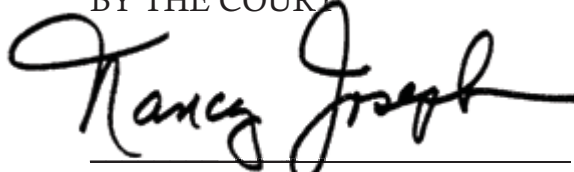
ORDER

NOW, THEREFORE, IT IS ORDERED that Ven Housen's motion for leave to file an amended complaint (Docket # 26) is **GRANTED**.

IT IS FURTHER ORDERED that Winnebago's motion for partial dismissal of the warranty claims (Docket # 15) is **DENIED AS MOOT**.

Dated at Milwaukee, Wisconsin this 17th day of September, 2020.

BY THE COURT

A handwritten signature in black ink, appearing to read "Nancy Joseph", written over a horizontal line.

NANCY JOSEPH
United States Magistrate Judge